

# HOUSE BILL No. 1450

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 33-19; IC 36-8.

**Synopsis:** Town marshals in the 1977 pension fund. Provides that town marshals and deputy town marshals are members of the 1977 police officers' and firefighters' pension and disability fund. Provides that for purposes of a town marshal or deputy participating in the 1977 fund, the local pension board consists of the town legislative body and a town marshal or deputy. Requires towns to amortize over ten years 50% of the amount necessary to fund the prior service liability of the town marshals and deputies. Increases pretrial diversion fees and deferred prosecution program fees by ten dollars and transfers the additional revenue to the 1977 fund to assist in funding the prior service liability of town marshals and deputies who become members of the 1977 fund.

**Effective:** July 1, 1999.

---

---

**Tincher, Alderman**

---

---

January 19, 1999, read first time and referred to Committee on Ways and Means.

---



C  
o  
p  
y

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

## HOUSE BILL No. 1450

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 33-19-5-1 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) For each action  
3       that results in a felony conviction under IC 35-50-2 or a misdemeanor  
4       conviction under IC 35-50-3, the clerk shall collect from the defendant  
5       a criminal costs fee of one hundred twenty dollars (\$120).

6       (b) In addition to the criminal costs fee collected under this section,  
7       the clerk shall collect from the defendant the following fees if they are  
8       required under IC 33-19-6:

- 9           (1) A document fee.  
10          (2) A marijuana eradication program fee.  
11          (3) An alcohol and drug services program user fee.  
12          (4) A law enforcement continuing education program fee.  
13          (5) A drug abuse, prosecution, interdiction, and correction fee.  
14          (6) An alcohol and drug countermeasures fee.  
15          (7) A child abuse prevention fee.  
16          (8) A domestic violence prevention and treatment fee.  
17          (9) A highway work zone fee.



(10) A deferred prosecution fee (IC 33-19-6-16.2).

(c) Instead of the criminal costs fee prescribed by this section, the clerk shall collect a pretrial diversion program fee if an agreement between the prosecuting attorney and the accused person entered into under IC 33-14-1-7 requires payment of those fees by the accused person. The pretrial diversion program fee is:

(1) an initial user's fee of ~~fifty~~ **sixty** dollars ~~(\$50);~~ **(\$60);** and

(2) a monthly user's fee of ~~ten~~ **twenty** dollars ~~(\$10)~~ **(\$20)** for each month that the person remains in the pretrial diversion program.

(d) The clerk shall transfer to the county auditor or city or town fiscal officer the following fees, within thirty (30) days after they are collected, for deposit by the auditor or fiscal officer in the appropriate user fee fund established under IC 33-19-8:

(1) **Except as provided in subsection (f),** the pretrial diversion fee.

(2) The marijuana eradication program fee.

(3) The alcohol and drug services program user fee.

(4) The law enforcement continuing education program fee.

(e) Unless otherwise directed by a court, if a clerk collects only part of a criminal costs fee from a defendant under this section, the clerk shall distribute the partial payment of the criminal costs fee as follows:

(1) First, the clerk shall apply the partial payment to general court costs.

(2) Second, if there is money remaining after the partial payment is applied to general court costs under subdivision (1), the clerk shall distribute the partial payment for deposit in the appropriate county user fee fund.

(3) Third, if there is money remaining after distribution under subdivision (2), the clerk shall distribute the partial payment for deposit in the state user fee fund.

(4) Fourth, if there is money remaining after distribution under subdivision (3), the clerk shall distribute the partial payment to any other applicable user fee fund.

(5) Fifth, if there is money remaining after distribution under subdivision (4), the clerk shall apply the partial payment to any outstanding fines owed by the defendant.

**(f) The clerk shall transfer to the treasurer of state, not more than thirty (30) days after the fees are collected, ten dollars (\$10) from each initial user's fee collected under the pretrial diversion program and ten dollars (\$10) from each monthly user's fee collected under the pretrial diversion program. The treasurer of state shall deposit the amounts transferred under this section in the**



C  
O  
P  
Y

1 **account established in the 1977 police officers' and firefighters'**  
 2 **pension and disability fund under IC 36-8-8-4(a).**

3 SECTION 2. IC 33-19-5-2 IS AMENDED TO READ AS  
 4 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) Except as  
 5 provided in subsections (d) and (e), for each action that results in a  
 6 judgment:

- 7 (1) for a violation constituting an infraction; or  
 8 (2) for a violation of an ordinance of a municipal corporation (as  
 9 defined in IC 36-1-2-10);

10 the clerk shall collect from the defendant an infraction or ordinance  
 11 violation costs fee of seventy dollars (\$70).

12 (b) In addition to the infraction or ordinance violation costs fee  
 13 collected under this section, the clerk shall collect from the defendant  
 14 the following fees if they are required under IC 33-19-6:

- 15 (1) A document fee.  
 16 (2) An alcohol and drug services program user fee.  
 17 (3) A law enforcement continuing education program fee.  
 18 (4) An alcohol and drug countermeasures fee.  
 19 (5) A highway work zone fee.  
 20 (6) A deferred prosecution fee (IC 33-19-6-16.2).

21 (c) The clerk shall transfer to the county auditor or fiscal officer of  
 22 the municipal corporation the following fees, within thirty (30) days  
 23 after they are collected, for deposit by the auditor or fiscal officer in the  
 24 user fee fund established under IC 33-19-8:

- 25 (1) The alcohol and drug services program user fee.  
 26 (2) The law enforcement continuing education program fee.  
 27 (3) **Except as provided in subsection (f)**, the deferral program  
 28 fee.

29 (d) The defendant is not liable for any ordinance violation costs fee  
 30 in an action in which:

- 31 (1) the defendant was charged with an ordinance violation subject  
 32 to IC 33-6-3;  
 33 (2) the defendant denied the violation under IC 33-6-3-2;  
 34 (3) proceedings in court against the defendant were initiated  
 35 under IC 34-28-5 (or IC 34-4-32 before its repeal); and  
 36 (4) the defendant was tried and the court entered judgment for the  
 37 defendant for the violation.

38 (e) Instead of the infraction or ordinance violation costs fee  
 39 prescribed by subsection (a), the clerk shall collect a deferral program  
 40 fee if an agreement between a prosecuting attorney or an attorney for  
 41 a municipal corporation and the person charged with a violation  
 42 entered into under IC 34-28-5-1 (or IC 34-4-32-1 before its repeal)



requires payment of those fees by the person charged with the violation. The deferral program fee is:

- (1) an initial user's fee not to exceed ~~fifty-two~~ **sixty-two** dollars ~~(\$52); (\$62);~~ and
- (2) a monthly user's fee not to exceed ~~ten~~ **twenty** dollars ~~(\$10)~~ **(\$20)** for each month the person remains in the deferral program.

**(f) The clerk shall transfer to the treasurer of state, not more than thirty (30) days after the fees are collected, ten dollars (\$10) from each initial user's fee collected under the deferral program and ten dollars (\$10) from each monthly user's fee collected under the deferral program. The treasurer of state shall deposit the amounts transferred under this section in the account established in the 1977 police officers' and firefighters' pension and disability fund under IC 36-8-8-4(a).**

SECTION 3. IC 33-19-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) A city or town user fee fund is established in each city or town having a city or town court for the purpose of supplementing the cost of various program services. The city or town fund shall be administered by the fiscal officer of the city or town.

(b) The city or town fund consists of the following fees collected by a clerk under this article:

- (1) **Except as provided in IC 33-19-5-1(f)**, the pretrial diversion program fee.
- (2) The alcohol and drug services fee.
- (3) The law enforcement continuing education program fee.
- (4) **Except as provided in IC 33-19-5-2(f)**, the deferral program fee.

SECTION 4. IC 36-8-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. **(a) Except as provided in subsection (b)**, "local board" means the board of trustees of a 1925, 1937, or 1953 fund.

**(b) For a town with a marshal (or a marshal and any deputy town marshals) that participates in the 1977 fund under IC 36-8-8-3(a), "local board" means the town legislative body and a town marshal or deputy town marshal selected by the marshal and deputy town marshals for a four (4) year term.**

SECTION 5. IC 36-8-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. This chapter applies to:

- (1) full-time police officers hired or rehired after April 30, 1977, in all municipalities, or who converted their benefits under IC 19-1-17.8-7 (repealed September 1, 1981);



C  
O  
P  
Y

(2) full-time fully paid firefighters hired or rehired after April 30, 1977, or who converted their benefits under IC 19-1-36.5-7 (repealed September 1, 1981);

(3) a police matron hired or rehired after April 30, 1977, and before July 1, 1996, who is a member of a police department in a second or third class city on March 31, 1996; ~~and~~

(4) a park ranger who:

(A) completed at least the number of weeks of training at the Indiana law enforcement academy that were required at the time the park ranger attended the Indiana law enforcement academy;

(B) graduated from the Indiana law enforcement academy; and

(C) is employed by the parks department of a city having a population of more than one hundred twenty thousand (120,000) but less than one hundred fifty thousand (150,000);

**and**

**(5) except as provided in section 3 of this chapter, town marshals and deputy town marshals serving on or hired after June 30, 1999;**

except as provided by section 7 of this chapter.

SECTION 6. IC 36-8-8-2.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 2.2. As used in this chapter, "safety board":**

**(1) means the town legislative body for a town described in IC 36-8-1-7(b); and**

**(2) has the meaning set forth in IC 36-1-2-16 for other municipalities.**

SECTION 7. IC 36-8-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) If a town establishes a board of metropolitan police commissioners, ~~or if a town~~ becomes a city, ~~or employs a town marshal (or a town marshal and any deputy town marshals)~~, the municipality shall participate in the 1977 fund. However, if a police officer ~~or a town marshal or deputy town marshal~~ is a member of the public employees' retirement fund, he may continue as a member of that fund instead of the 1977 fund. A police officer employed by a municipality at the time the municipality enters the 1977 fund under this section shall be a member of the 1977 fund unless the police officer elects to continue as a member of the public employees' retirement fund. **Notwithstanding the age requirements and the physical and mental examination requirements under IC 36-8-8-7(a), a town marshal or deputy town marshal serving on June 30, 1999, who is a member of the public employees'**



1 **retirement fund shall be a member of the 1977 fund unless the**  
 2 **town marshal or deputy town marshal elects to continue as a**  
 3 **member of the public employees' retirement fund.**

4 (b) If a unit did not establish a 1937 fund for its firefighters, the unit  
 5 may participate in the public employees' retirement fund or it may  
 6 participate in the 1977 fund. If a unit established a 1937 fund for its  
 7 firefighters, the unit is and shall remain a participant in the 1977 fund.

8 (c) A unit that:

9 (1) has not established a pension fund for its firefighters; or

10 (2) is participating in the public employees' retirement fund under  
 11 subsection (b);

12 may participate in the 1977 fund upon approval by the fiscal body,  
 13 notwithstanding IC 5-10.3-6-8. A unit that participates in the 1977 fund  
 14 under this subsection must comply with section 21 of this chapter.  
 15 However, if a firefighter is a member of the public employees'  
 16 retirement fund, the firefighter may continue as a member of that fund  
 17 instead of the 1977 fund.

18 **SECTION 8. IC 36-8-8-4 IS AMENDED TO READ AS FOLLOWS**  
 19 **[EFFECTIVE JULY 1, 1999]: Sec. 4. (a) There is established a police**  
 20 **officers' and firefighters' pension and disability fund to be known as the**  
 21 **1977 fund. The 1977 fund consists of fund member and employer**  
 22 **contributions, plus the earnings on them, to be used to make benefit**  
 23 **payments to fund members and their survivors in the amounts and**  
 24 **under the conditions specified in this chapter. The amounts deposited**  
 25 **in the 1977 fund under IC 33-19-5-1(f) and IC 33-19-5-2(f) shall be**  
 26 **deposited in a separate account in the 1977 fund that is established**  
 27 **to assist in funding the prior service liability of town marshals and**  
 28 **deputy town marshals who become members of the 1977 fund.**

29 (b) The board of trustees of the public employees' retirement fund  
 30 (referred to in this chapter as the "PERF board") shall administer the  
 31 1977 fund, which may be commingled with the public employees'  
 32 retirement fund for investment purposes. All actuarial data shall be  
 33 computed on the total membership of the fund, and the cost of  
 34 participation is the same for all employers in the fund. The fund  
 35 member and employer contributions shall be recorded separately for  
 36 each employer.

37 (c) The 1977 fund advisory committee, referred to as the committee,  
 38 is established. The PERF board shall consult with the committee on  
 39 matters pertaining to the administration of this chapter and  
 40 IC 5-10.3-11. The committee shall consist of the following members  
 41 appointed by the governor every two (2) years for a term of two (2)  
 42 years:



(1) Two (2) firefighters:

(A) each of whom must be a member of the 1937 fund or the 1977 fund; and

(B) neither of whom may be in an upper level policymaking position.

(2) Two (2) police officers:

(A) each of whom must be a member of the 1925 fund, the 1953 fund, or the 1977 fund; and

(B) neither of whom may be in an upper level policymaking position.

(3) Two (2) members, each of whom must be an executive of an employer.

(4) Two (2) members, each of whom must be a member of the legislative body of an employer.

The term of each member begins on July 1 following appointment and continues until his successor is qualified. A member of the committee who no longer holds the position that qualified him for appointment under subdivision (1), (2), (3), or (4) forfeits his membership on the committee. The governor shall appoint a person to fill a vacancy on the committee for the remainder of the unexpired term.

(d) Each member of the committee who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). Such a member is also entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the state budget agency.

SECTION 9. IC 36-8-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) Except as provided in subsections (d), (e), (f), (g), and (h):

(1) a police officer; ~~or~~

(2) a firefighter; ~~or~~

**(3) a town marshal or deputy town marshal described in section 1(5) of this chapter;**

who is less than thirty-six (36) years of age and who passes the baseline statewide physical and mental examinations required under section 19 of this chapter shall be a member of the 1977 fund and is not a member of the 1925 fund, the 1937 fund, or the 1953 fund.

(b) A police officer or firefighter with service before May 1, 1977, who is hired or rehired after April 30, 1977, may receive credit under this chapter for service as a police officer or firefighter prior to entry into the 1977 fund if the employer who rehires him chooses to



C  
O  
P  
Y



1 contribute to the 1977 fund the amount necessary to amortize his prior  
 2 service liability over a period of not more than forty (40) years, the  
 3 amount and the period to be determined by the PERF board. If the  
 4 employer chooses to make the contributions, the police officer or  
 5 firefighter is entitled to receive credit for his prior years of service  
 6 without making contributions to the 1977 fund for that prior service. In  
 7 no event may a police officer or firefighter receive credit for prior years  
 8 of service if the police officer or firefighter is receiving a benefit or is  
 9 entitled to receive a benefit in the future from any other public pension  
 10 plan with respect to the prior years of service.

11 (c) Except as provided in section 18 of this chapter, a police officer  
 12 or firefighter is entitled to credit for all years of service after April 30,  
 13 1977, with the police or fire department of an employer covered by this  
 14 chapter.

15 (d) A police officer or firefighter with twenty (20) years of service  
 16 does not become a member of the 1977 fund and is not covered by this  
 17 chapter if he:

- 18 (1) was hired before May 1, 1977;
- 19 (2) did not convert under IC 19-1-17.8-7 or IC 19-1-36.5-7 (both
- 20 of which were repealed September 1, 1981); and
- 21 (3) is rehired after April 30, 1977, by the same employer.

22 (e) A police officer or firefighter does not become a member of the  
 23 1977 fund and is not covered by this chapter if he:

- 24 (1) was hired before May 1, 1977;
- 25 (2) did not convert under IC 19-1-17.8-7 or IC 19-1-36.5-7 (both
- 26 of which were repealed September 1, 1981);
- 27 (3) was rehired after April 30, 1977, but before February 1, 1979;
- 28 and
- 29 (4) was made, before February 1, 1979, a member of a 1925,
- 30 1937, or 1953 fund.

31 (f) A police officer or firefighter does not become a member of the  
 32 1977 fund and is not covered by this chapter if he:

- 33 (1) was hired by the police or fire department of a unit before May
- 34 1, 1977;
- 35 (2) did not convert under IC 19-1-17.8-7 or IC 19-1-36.5-7 (both
- 36 of which were repealed September 1, 1981);
- 37 (3) is rehired by the police or fire department of another unit after
- 38 December 31, 1981; and
- 39 (4) is made, by the fiscal body of the other unit after December
- 40 31, 1981, a member of a 1925, 1937, or 1953 fund of the other
- 41 unit.

42 If the police officer or firefighter is made a member of a 1925, 1937, or



1 1953 fund, he is entitled to receive credit for all his years of service,  
2 including years before January 1, 1982.

3 (g) As used in this subsection, "emergency medical services" and  
4 "emergency medical technician" have the meanings set forth in  
5 IC 16-18-2-110 and IC 16-18-2-112. A firefighter who:

- 6 (1) is employed by a unit that is participating in the 1977 fund;
- 7 (2) was employed as an emergency medical technician by a  
8 political subdivision wholly or partially within the department's  
9 jurisdiction;
- 10 (3) was a member of the public employees' retirement fund during  
11 the employment described in subdivision (2); and

12 (4) ceased employment with the political subdivision and was  
13 hired by the unit's fire department due to the reorganization of  
14 emergency medical services within the department's jurisdiction;  
15 shall participate in the 1977 fund. A firefighter who participates in the  
16 1977 fund under this subsection is subject to sections 18 and 21 of this  
17 chapter.

18 (h) A police officer or firefighter does not become a member of the  
19 1977 fund and is not covered by this chapter if the individual was  
20 appointed as:

- 21 (1) a fire chief under a waiver under IC 36-8-4-6(c); or
- 22 (2) a police chief under a waiver under IC 36-8-4-6.5(c);

23 unless the executive of the unit requests that the 1977 fund accept the  
24 individual in the 1977 fund and the individual previously was a  
25 member of the 1977 fund.

26 (i) A police matron hired or rehired after April 30, 1977, and before  
27 July 1, 1996, who is a member of a police department in a second or  
28 third class city on March 31, 1996, is a member of the 1977 fund.

29 (j) A park ranger who:

- 30 (1) completed at least the number of weeks of training at the  
31 Indiana law enforcement academy that were required at the time  
32 the park ranger attended the Indiana law enforcement academy;
- 33 (2) graduated from the Indiana law enforcement academy; and
- 34 (3) is employed by the parks department of a city having a  
35 population of more than one hundred twenty thousand (120,000)  
36 but less than one hundred fifty thousand (150,000);

37 is a member of the fund.

38 SECTION 10. IC 36-8-8-8 IS AMENDED TO READ AS  
39 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) Each fund  
40 member **who is a police officer or firefighter** shall contribute during  
41 the period of his employment or for thirty-two (32) years, whichever is  
42 shorter, an amount equal to six percent (6%) of the salary of a first

C  
o  
p  
y



1 class patrolman or firefighter. **Each fund member who is a town**  
 2 **marshal or deputy town marshal shall contribute, during the**  
 3 **period of the fund member's employment or for thirty-two (32)**  
 4 **years, whichever is shorter, an amount equal to six percent (6%)**  
 5 **of the fund member's base salary.** However, the employer may pay  
 6 all or a part of the contribution for the member. The amount of the  
 7 contribution, other than contributions paid on behalf of a member, shall  
 8 be deducted each pay period from each fund member's salary by the  
 9 disbursing officer of the employer. The employer shall send to the  
 10 PERF board each year on March 31, June 30, September 30, and  
 11 December 31, for the calendar quarters ending on those dates, a  
 12 certified list of fund members and a warrant issued by the employer for  
 13 the total amount deducted for fund members' contributions.

14 (b) If a fund member ends his employment other than by death or  
 15 disability before he completes twenty (20) years of active service, the  
 16 PERF board shall return to him in a lump sum his contributions plus  
 17 interest as determined by the PERF board. If the fund member returns  
 18 to service, he is entitled to credit for the years of service for which his  
 19 contributions were refunded if he repays the amount refunded to him  
 20 in either a lump sum or a series of payments determined by the PERF  
 21 board.

22 SECTION 11. IC 36-8-8-11 IS AMENDED TO READ AS  
 23 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. (a) Benefits paid  
 24 under this section are subject to section 2.5 of this chapter.

25 (b) Each fund member who **is a police officer or firefighter and**  
 26 **qualifies for a retirement benefit payment under section 10(b) of this**  
 27 **chapter is entitled to receive a monthly benefit equal to fifty percent**  
 28 **(50%) of the monthly salary of a first class patrolman or firefighter in**  
 29 **the year the member ended his active service plus:**

30 (1) for a member who retires before January 1, 1986, two percent  
 31 (2%) of that salary for each full year of active service; or

32 (2) for a member who retires after December 31, 1985, one  
 33 percent (1%) of that salary for each six (6) months of active  
 34 service;

35 over twenty (20) years, to a maximum of twelve (12) years.

36 (c) Each fund member who qualifies for a retirement benefit  
 37 payment under section 10(c) of this chapter is entitled to receive a  
 38 monthly benefit equal to fifty percent (50%) of the monthly salary of  
 39 a first class patrolman or firefighter in the year the member ended his  
 40 active service plus one percent (1%) of that salary for each six (6)  
 41 months of active service over twenty (20) years, to a maximum of  
 42 twelve (12) years, all actuarially reduced for each month (if any) of



C  
O  
P  
Y

benefit payments prior to fifty-two (52) years of age, by a factor established by the fund's actuary from time to time.

**(d) Each fund member who is a town marshal or deputy town marshal and qualifies for a retirement benefit payment under section 10 of this chapter is entitled to receive a monthly benefit equal to fifty percent (50%) of the member's monthly salary in the year the member ended active service plus one percent (1%) of that salary for each six (6) months of active service over twenty (20) years, to a maximum of twelve (12) years.**

SECTION 12. IC 36-8-8-12.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12.3. (a) Upon a request from a fund member or from the safety board of the appropriate police or fire department, the local board shall conduct a hearing under section 12.7 of this chapter to determine whether the fund member has a covered impairment.

(b) A covered impairment is an impairment that permanently or temporarily makes a fund member unable to perform the essential function of the member's duties, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, with the police or fire department **or as a town marshal or deputy town marshal**. However, a covered impairment does not include an impairment:

- (1) resulting from an intentionally self-inflicted injury or attempted suicide while sane or insane;
- (2) resulting from the fund member's commission or attempted commission of a felony;
- (3) that begins within two (2) years after a fund member's entry or reentry into active service with the department and that was caused or contributed to by a mental or physical condition that manifested itself before the fund member entered or reentered active service. Notwithstanding this subdivision, a fund member may not be required to satisfy more than one (1) such two (2) year period for the same mental or physical condition; or
- (4) that is occasioned, in whole or in part, by the fund member currently engaging (as defined in 29 CFR 1630.3, Appendix) in any of the following:

(A) Use of a controlled substance (as defined in the Controlled Substances Act (21 U.S.C. 812)).

(B) Unlawful use of a prescription drug.

(c) Notwithstanding subsection (b), this subsection applies to the following:

- (1) A fund member who is hired after March 1, 1992.



(2) A fund member who was admitted to the 1977 fund after having been covered by another public pension plan as a police officer or firefighter.

For a fund member who is determined by the PERF board to have a Class 3 excludable condition under ~~IC 36-8-8-13.6~~, **section 13.6 of this chapter**, a covered impairment does not include an impairment that would be classified as a Class 3 impairment that begins at any time after the fund member's entry or reentry into active service with the department and is related in any manner to the Class 3 excludable condition.

(d) If the local board determines that a covered impairment exists, the **town legislative body (for a town marshal or deputy town marshal) or the** chief of the police or fire department shall submit to the local board written determinations of the following:

(1) Whether there is suitable and available work on the appropriate department **or as a town marshal or deputy town marshal** for which the fund member is or may be capable of becoming qualified, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

(2) For a fund member covered by sections 12.5 and 13.5 of this chapter, the fund member's years of service with the department.

SECTION 13. IC 36-8-8-12.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12.5. (a) This section applies only to a fund member who:

- (1) is hired for the first time after December 31, 1989;
- (2) chooses coverage by this section and section 13.5 of this chapter under section 12.4 of this chapter; or
- (3) is described in section 12.3(c)(2) of this chapter.

(b) At the same hearing where the determination of whether the fund member has a covered impairment is made, the local board shall determine the following:

(1) Whether the fund member has a Class 1 impairment. A Class 1 impairment is a covered impairment that is the direct result of one (1) or more of the following:

(A) A personal injury that occurs while the fund member is on duty.

(B) A personal injury that occurs while the fund member is off duty and is responding to:

- (i) an offense or a reported offense, in the case of a police officer, **town marshal, or deputy town marshal**; or
- (ii) an emergency or reported emergency for which the fund member is trained, in the case of a firefighter.



- 1 (C) An occupational disease (as defined in IC 22-3-7-10). A  
 2 covered impairment that is included within this clause and  
 3 subdivision (2) shall be considered a Class 1 impairment.
- 4 (2) Whether the fund member has a Class 2 impairment. A Class  
 5 2 impairment is a covered impairment that is a duty related  
 6 disease. A duty related disease means a disease arising out of the  
 7 fund member's employment. A disease shall be considered to  
 8 arise out of the fund member's employment if it is apparent to the  
 9 rational mind, upon consideration of all of the circumstances,  
 10 that:
- 11 (A) there is a connection between the conditions under which  
 12 the fund member's duties are performed and the disease;  
 13 (B) the disease can be seen to have followed as a natural  
 14 incident of the fund member's duties as a result of the exposure  
 15 occasioned by the nature of the fund member's duties; and  
 16 (C) the disease can be traced to the fund member's  
 17 employment as the proximate cause.
- 18 (3) Whether the fund member has a Class 3 impairment. A Class  
 19 3 impairment is a covered impairment that is not a Class 1  
 20 impairment or a Class 2 impairment.
- 21 SECTION 14. IC 36-8-8-12.7 IS AMENDED TO READ AS  
 22 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12.7. (a) This section  
 23 applies to hearings conducted by local boards concerning  
 24 determinations of impairment under this chapter or of disability under  
 25 IC 36-8-5-2(g), IC 36-8-6, IC 36-8-7, and IC 36-8-7.5.
- 26 (b) At least five (5) days before the hearing, the local board shall  
 27 give notice to the fund member and the safety board of the time, date,  
 28 and place of the hearing.
- 29 (c) At the hearing, the local board shall permit the fund member and  
 30 the safety board to:
- 31 (1) be represented by any individual;  
 32 (2) through witnesses and documents, present evidence;  
 33 (3) conduct cross-examination; and  
 34 (4) present arguments.
- 35 (d) At the hearing, the local board shall require all witnesses to be  
 36 examined under oath, which may be administered by a member of the  
 37 local board.
- 38 (e) The local board shall, at the request of the fund member or the  
 39 safety board, issue:
- 40 (1) subpoenas;  
 41 (2) discovery orders; and  
 42 (3) protective orders;

C  
O  
P  
Y

1 in accordance with the Indiana Rules of Trial Procedure that govern  
2 discovery, depositions, and subpoenas in civil actions.

3 (f) The local board shall have the hearing recorded so that a  
4 transcript may be made of the proceedings.

5 (g) After the hearing, the local board shall make its determinations,  
6 including findings of fact, in writing and shall provide copies of its  
7 determinations to the fund member and the safety board.

8 (h) The local board may on its own motion issue:

- 9 (1) subpoenas;
- 10 (2) discovery orders; and
- 11 (3) protective orders;

12 in accordance with the Indiana Rules of Trial Procedure that govern  
13 discovery, depositions, and subpoenas in civil actions.

14 (i) At the hearing, the local board may exclude evidence that is  
15 irrelevant, immaterial, unduly repetitious, or excludable on the basis of  
16 evidentiary privilege recognized by the courts.

17 (j) At the hearing, the local board may request the testimony of  
18 witnesses and the production of documents.

19 (k) If a subpoena or order is issued under this section, the party  
20 seeking the subpoena or order shall serve it in accordance with the  
21 Indiana Rules of Trial Procedure. However, if the subpoena or order is  
22 on the local board's own motion, the sheriff of the county in which the  
23 subpoena or order is to be served shall serve it. A subpoena or order  
24 under this section may be enforced in the circuit or superior court of  
25 the county in which the subpoena or order is served.

26 (l) With respect to a hearing conducted for purposes of determining  
27 disability under IC 36-8-6, IC 36-8-7, or IC 36-8-7.5, the determination  
28 of the local board after a hearing is final and may be appealed to the  
29 court.

30 (m) With respect to a hearing conducted for purposes of  
31 determining impairment or class of impairment under this chapter, the  
32 fund member may appeal the local board's determinations. An appeal  
33 under this subsection:

- 34 (1) must be made in writing;
- 35 (2) must state the class of impairment and the degree of  
36 impairment that is claimed by the fund member;
- 37 (3) must include a written determination by the **town legislative**  
38 **body (for a town marshal or deputy town marshal) or the**  
39 **chief of the police or fire department** stating that there is no  
40 suitable and available work; and
- 41 (4) must be filed with the local board and the PERF board's  
42 director no later than thirty (30) days after the date on which the

C  
o  
p  
y



1 fund member received a copy of the local board's determinations.

2 (n) To the extent required by the Americans with Disabilities Act,  
3 the transcripts, records, reports, and other materials generated as a  
4 result of a hearing, review, or appeal conducted to determine an  
5 impairment under this chapter or a disability under IC 36-8-6,  
6 IC 36-8-7, or IC 36-8-7.5 must be:

7 (1) retained in the separate medical file created for the member;  
8 and

9 (2) treated as a confidential medical record.

10 SECTION 15. IC 36-8-8-13.1 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13.1. (a) If:

12 (1) the local board has determined under this chapter that a  
13 covered impairment exists and the safety board has determined  
14 that there is no suitable and available work within the department,  
15 considering reasonable accommodation to the extent required by  
16 the Americans with Disabilities Act; or

17 (2) the fund member has filed an appeal under section 12.7(m) of  
18 this chapter;

19 the local board shall submit the local board's determinations and the  
20 safety board's determinations to the PERF board's director.

21 (b) After the PERF board's director receives the determinations, the  
22 fund member must submit to an examination by a medical authority  
23 selected by the PERF board. The authority shall determine if there is a  
24 covered impairment. With respect to a fund member who is covered by  
25 sections 12.5 and 13.5 of this chapter, the authority shall determine the  
26 degree of impairment. The PERF board shall adopt rules under  
27 IC 4-22-2 to establish impairment standards, such as the impairment  
28 standards contained in the United States Department of Veterans  
29 Affairs Schedule for Rating Disabilities. The report of the examination  
30 shall be submitted to the PERF board's director. If a fund member  
31 refuses to submit to an examination, the authority may find that no  
32 impairment exists.

33 (c) The PERF board's director shall review the medical authority's  
34 report and the local board's determinations and issue an initial  
35 determination within sixty (60) days after receipt of the local board's  
36 determinations. The PERF board's director shall notify the local board,  
37 the safety board, and the fund member of the initial determination. The  
38 following provisions apply if the PERF board's director does not issue  
39 an initial determination within sixty (60) days and if the delay is not  
40 attributable to the fund member or the safety board:

41 (1) In the case of a review initiated under subsection (a)(1):

42 (A) the determinations of the local board and the **town**





1 **legislative body or the** chief of the police or fire department  
 2 are considered to be the initial determination; and

3 (B) for purposes of section 13.5(d) of this chapter, the fund  
 4 member is considered to be totally impaired.

5 (2) In the case of an appeal submitted under subsection (a)(2), the  
 6 statements made by the fund member under section 12.7(m) of  
 7 this chapter are considered to be the initial determination.

8 (d) The fund member, the safety board, or the local board may  
 9 object in writing to the director's initial determination within fifteen  
 10 (15) days after the determination is issued. If no written objection is  
 11 filed, the initial determination becomes the final order of the PERF  
 12 board. If a timely written objection is filed, the PERF board shall issue  
 13 the final order after a hearing. The final order shall be issued not later  
 14 than one hundred eighty (180) days after the date of receipt of the local  
 15 board's determination. The following provisions apply if a final order  
 16 is not issued within one hundred eighty (180) days and if the delay is  
 17 not attributable to the fund member, ~~or~~ the chief of the police or fire  
 18 department, **or the town legislative body:**

19 (1) In the case of a review initiated under subsection (a)(1):

20 (A) the determinations of the local board and the **town**  
 21 **legislative body or the** chief of the police or fire department  
 22 are considered to be the final order; and

23 (B) for purposes of section 13.5(d) of this chapter, the fund  
 24 member is considered to be totally impaired.

25 (2) In the case of an appeal submitted under subsection (a)(2), the  
 26 statements made by the fund member under section 12.7(m) of  
 27 this chapter are considered to be the final order.

28 (e) If the PERF board approves the director's initial determination,  
 29 then the PERF board shall issue a final order adopting the initial  
 30 determination. The local board and the chief of the police or fire  
 31 department shall comply with the initial determination. If the PERF  
 32 board does not approve the initial determination, the PERF board may  
 33 receive additional evidence on the matter before issuing a final order.

34 (f) Appeals of the PERF board's final order may be made under  
 35 IC 4-21.5.

36 (g) The transcripts, records, reports, and other materials compiled  
 37 under this section must be retained in accordance with the procedures  
 38 specified in section 12.7(n) of this chapter.

39 SECTION 16. IC 36-8-8-13.5 IS AMENDED TO READ AS  
 40 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13.5. (a) This section  
 41 applies only to a fund member who:

42 (1) is hired for the first time after December 31, 1989;



(2) chooses coverage by this section and section 12.5 of this chapter under section 12.4 of this chapter; or

(3) is described in section 12.3(c)(2) of this chapter.

(b) A fund member who is determined to have a Class 1 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to **the following amount:**

**(1) For a police officer or firefighter, the benefit is forty-five percent (45%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment.**

**(2) For a town marshal or deputy town marshal, the benefit is forty-five percent (45%) of the fund member's monthly salary in the year of the local board's determination of impairment.**

(c) A fund member who is determined to have a Class 2 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to **the following amount:**

**(1) For a police officer or firefighter, the benefit is twenty-two percent (22%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment plus one-half percent (0.5%) of that salary for each year of service, up to a maximum of thirty (30) years of service.**

**(2) For a town marshal or deputy town marshal, the benefit is twenty-two percent (22%) of the fund member's monthly salary in the year of the local board's determination of impairment plus one-half percent (0.5%) of that salary for each year of service, up to a maximum of thirty (30) years of service.**

(d) For applicants hired before March 2, 1992, a fund member who is determined to have a Class 3 impairment, and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to the product of the member's years of service (not to exceed thirty (30) years of service) multiplied by **the following amount:**

**(1) For a police officer or firefighter, one percent (1%) of the**



monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment.

**(2) For a town marshal or deputy town marshal, one percent (1%) of the fund member's monthly salary in the year of the local board's determination of impairment.**

(e) For applicants hired after March 1, 1992, or described in section 12.3(c)(2) of this chapter, a fund member who is determined to have a Class 3 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to the following benefits instead of benefits provided under subsection (d):

(1) If the fund member did not have a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund, the fund member is entitled to a monthly base benefit equal to the product of the member's years of service, not to exceed thirty (30) years of service, multiplied by **the following amount:**

**(A) For a police officer or firefighter,** one percent (1%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment.

**(B) For a town marshal or deputy town marshal, one percent (1%) of the fund member's monthly salary in the year of the local board's determination of impairment.**

(2) Except as provided in subdivision (5), a fund member is entitled to receive the benefits set forth in subdivision (1) if:

(A) the fund member had a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund;

(B) the fund member has a Class 3 impairment that is not related in any manner to the Class 3 excludable condition described in clause (A); and

(C) the Class 3 impairment described in clause (B) occurs after the fund member has completed four (4) years of service with the employer after the date the fund member entered or reentered the fund.

(3) Except as provided in subdivision (5), a fund member is not entitled to a monthly base benefit for a Class 3 impairment if:

(A) the fund member had a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund; and

(B) the Class 3 impairment occurs before the fund member has

C  
o  
p  
y



- 1 completed four (4) years of service with the employer after the  
 2 date the fund member entered or reentered the fund.
- 3 (4) A fund member is not entitled to a monthly base benefit for a  
 4 Class 3 impairment if:
- 5 (A) the fund member had a Class 3 excludable condition under  
 6 section 13.6 of this chapter at the time the fund member  
 7 entered or reentered the fund; and
- 8 (B) the Class 3 impairment is related in any manner to the  
 9 Class 3 excludable condition.
- 10 (5) If, during the first four (4) years of service with the employer:
- 11 (A) a fund member with a Class 3 excludable condition is  
 12 determined to have a Class 3 impairment; and
- 13 (B) the Class 3 impairment is attributable to an accidental  
 14 injury that is not related in any manner to the fund member's  
 15 Class 3 excludable condition;
- 16 the member is entitled to receive the benefits provided in  
 17 subdivision (1) with respect to the accidental injury. For purposes  
 18 of this subdivision, the local board shall make the initial  
 19 determination of whether an impairment is attributable to an  
 20 accidental injury. The local board shall forward the initial  
 21 determination to the director of the PERF board for a final  
 22 determination by the PERF board or the PERF board's designee.
- 23 (f) If a fund member is entitled to a monthly base benefit under  
 24 subsection (b), (c), (d), or (e), the fund member is also entitled to a  
 25 monthly amount that is no less than ten percent (10%) and no greater  
 26 than forty-five percent (45%) of the **following amount:**
- 27 **(1) For a police officer or firefighter, the** monthly salary of a  
 28 first class patrolman or firefighter in the year of the local board's  
 29 determination of impairment. The additional monthly amount  
 30 shall be determined by the PERF medical authority based on the  
 31 degree of impairment.
- 32 **(2) For a town marshal or deputy town marshal, the fund**  
 33 **member's monthly salary in the year of the local board's**  
 34 **determination of impairment.**
- 35 (g) Benefits for a Class 1 impairment are payable until the fund  
 36 member becomes fifty-two (52) years of age. Benefits for a Class 2 and  
 37 a Class 3 impairment are payable:
- 38 (1) for a period equal to the years of service of the member if the  
 39 member's total disability benefit is less than thirty percent (30%)  
 40 of:
- 41 **(A) the monthly salary of a first class patrolman or firefighter**  
 42 **in the year of the local board's determination of impairment,**

C  
O  
P  
Y

1           **for a police officer or firefighter; or**

2           **(B) the fund member's monthly salary in the year of the**  
 3           **local board's determination of impairment, for a town**  
 4           **marshal or deputy town marshal;**

5           and the member has fewer than four (4) years of service; or

6           (2) until the member becomes fifty-two (52) years of age if the  
 7           member's benefit is:

8           (A) equal to or greater than thirty percent (30%) of:

9           (i) the monthly salary of a first class patrolman or firefighter  
 10           in the year of the local board's determination of impairment,  
 11           **for a police officer or firefighter; or**

12           (ii) **the fund member's monthly salary in the year of the**  
 13           **local board's determination of impairment, for a town**  
 14           **marshal or deputy town marshal; or**

15           (B) less than thirty percent (30%) of the monthly salary of a  
 16           first class patrolman or firefighter in the year of the local  
 17           board's determination of impairment if the member has at least  
 18           four (4) years of service.

19           (h) Upon becoming fifty-two (52) years of age, a fund member with  
 20           a Class 1 or Class 2 impairment is entitled to receive the retirement  
 21           benefit payable to a fund member with:

22           (1) twenty (20) years of service; or

23           (2) the total years of service and salary, as of the year the member  
 24           becomes fifty-two (52) years of age, that the fund member would  
 25           have earned if the fund member had remained in active service  
 26           until becoming fifty-two (52) years of age;

27           whichever is greater.

28           (i) Upon becoming fifty-two (52) years of age, a fund member who  
 29           is receiving or has received a Class 3 impairment benefit that is:

30           (1) equal to or greater than thirty percent (30%) of:

31           (A) the monthly salary of a first class patrolman or firefighter  
 32           in the year of the local board's determination of impairment,  
 33           **for a police officer or firefighter; or**

34           (B) **the fund member's monthly salary in the year of the**  
 35           **local board's determination of impairment, for a town**  
 36           **marshal or deputy town marshal; or**

37           (2) less than thirty percent (30%) of:

38           (A) the monthly salary of a first class patrolman or firefighter  
 39           in the year of the local board's determination of impairment,  
 40           **for a police officer or firefighter; or**

41           (B) **the fund member's monthly salary in the year of the**  
 42           **local board's determination of impairment, for a town**



**marshal or deputy town marshal;**

if the member has at least four (4) years of service;  
is entitled to receive the retirement benefit payable to a fund member  
with twenty (20) years of service.

(j) Notwithstanding section 12.3 of this chapter and any other  
provision of this section, a member who:

- (1) has had a covered impairment;
- (2) recovers and returns to active service with the department; and
- (3) within two (2) years after returning to active service has an  
impairment that, except for section 12.3(b)(3) of this chapter,  
would be a covered impairment;

is entitled to the benefit under this subsection if the impairment  
described in subdivision (3) results from the same condition or  
conditions (without an intervening circumstance) that caused the  
covered impairment described in subdivision (1). The member is  
entitled to receive the monthly disability benefit amount paid to the  
member at the time of the member's return to active service plus any  
adjustments under section 15 of this chapter that would have been  
applicable during the member's period of reemployment.

SECTION 17. IC 36-8-8-14.1 IS AMENDED TO READ AS  
FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 14.1. (a) Benefits paid  
under this section are subject to section 2.5 of this chapter.

(b) If a fund member dies while receiving retirement or disability  
benefits, the following apply:

- (1) Each of the member's surviving children is entitled to a  
monthly benefit equal to twenty percent (20%) of the fund  
member's monthly benefit:

(A) until the child reaches eighteen (18) years of age; or

(B) until the child reaches twenty-three (23) years of age if the  
child is enrolled in and regularly attending a secondary school  
or is a full-time student at an accredited college or university;

whichever period is longer. However, if the board finds upon the  
submission of satisfactory proof that a child who is at least  
eighteen (18) years of age is mentally or physically incapacitated,  
is not a ward of the state, and is not receiving a benefit under  
subdivision (1)(B), the child is entitled to receive an amount each  
month that is equal to the greater of thirty percent (30%) of the  
monthly pay of a first class patrolman or first class firefighter or  
fifty-five percent (55%) of the monthly benefit the deceased  
member was receiving or was entitled to receive on the date of the  
member's death as long as the mental or physical incapacity of the  
child continues. Benefits paid for a child shall be paid to the



1 surviving parent as long as the child resides with and is supported  
 2 by the surviving parent. If the surviving parent dies, the benefits  
 3 shall be paid to the legal guardian of the child.

4 (2) The member's surviving spouse is entitled to a monthly benefit  
 5 equal to sixty percent (60%) of the fund member's monthly  
 6 benefit during the spouse's lifetime. If the spouse remarried before  
 7 September 1, 1983, and benefits ceased on the date of remarriage,  
 8 the benefits for the surviving spouse shall be reinstated on July 1,  
 9 1997, and continue during the life of the surviving spouse.

10 If a fund member dies while receiving retirement or disability benefits,  
 11 there is no surviving eligible child or spouse, and there is proof  
 12 satisfactory to the local board, subject to review in the manner  
 13 specified in section 13.1(b) of this chapter, that the parent was wholly  
 14 dependent on the fund member, the member's surviving parent is  
 15 entitled, or both surviving parents if qualified are entitled jointly, to  
 16 receive fifty percent (50%) of the fund member's monthly benefit  
 17 during the parent's or parents' lifetime.

18 (c) If a fund member dies while on active duty or while retired and  
 19 not receiving benefits, the member's children and the member's spouse,  
 20 or the member's parent or parents, are entitled to receive a monthly  
 21 benefit determined under subsection (b). If the fund member did not  
 22 have at least twenty (20) years of service or was not at least fifty-two  
 23 (52) years old, the benefit is computed as if the member:

24 (1) did have twenty (20) years of service; and

25 (2) was fifty-two (52) years of age.

26 (d) If a fund member dies in the line of duty after August 31, 1982,  
 27 the member's surviving spouse is entitled to an additional monthly  
 28 benefit during the spouse's lifetime, equal to the difference between the  
 29 benefit payable under subsection (b)(2) and the benefit to which the  
 30 member would have been entitled on the date of the member's death,  
 31 but not less than the benefit payable to a member with twenty (20)  
 32 years service at fifty-two (52) years of age. If the spouse remarried  
 33 before September 1, 1983, and benefits ceased on the date of  
 34 remarriage, the benefits for the surviving spouse shall be reinstated on  
 35 July 1, 1997, and continue during the life of the surviving spouse. For  
 36 purposes of this subsection, "dies in the line of duty" means death that  
 37 occurs as a direct result of personal injury or illness resulting from:

38 (1) any action that the member, in the member's capacity as a  
 39 police officer, **town marshal, or deputy town marshal** is  
 40 obligated or authorized by rule, regulation, condition of  
 41 employment or service, or law to perform in the course of  
 42 controlling or reducing crime or enforcing the criminal law; or



(2) any action that the member, in the member's capacity as a firefighter, is obligated or authorized by rule, regulation, condition of employment or service, or law to perform while on the scene of an emergency run (including false alarms) or on the way to or from the scene.

SECTION 18. IC 36-8-8-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 18. (a) Except as provided in subsection (b) **or (f)**, if a unit becomes a participant in the 1977 fund, credit for prior service by police officers (including prior service as a full-time, fully paid town marshal or full-time, fully paid deputy town marshal by a police officer employed by a metropolitan board of police commissioners) or by firefighters before the date of participation may be given by the PERF board only if:

(1) the unit contributes to the 1977 fund the amount necessary to amortize prior service liability over a period of not more than forty (40) years, the amount and period to be determined by the PERF board; and

(2) the police officers or firefighters pay, either in a lump sum or in a series of payments determined by the PERF board, the amount that they would have contributed if they had been members of the 1977 fund during their prior service.

If the requirements of subdivisions (1) and (2) are not met, a fund member is entitled to credit only for years of service after the date of participation.

(b) If a unit becomes a participant in the 1977 fund under section 3(c) of this chapter, or if a firefighter becomes a member of the 1977 fund under section 7(g) of this chapter, credit for prior service before the date of participation or membership shall be given by the PERF board as follows:

(1) For a member who will accrue twenty (20) years of service credit in the 1977 fund by the time the member reaches the earliest retirement age under the fund at the time of the member's date of participation in the 1977 fund, the member will be given credit in the 1977 fund for one-third (1/3) of the member's years of participation in PERF as a police officer, a firefighter, or an emergency medical technician.

(2) For a member who will not accrue twenty (20) years of service credit in the 1977 fund by the time the member reaches the earliest retirement age under the fund at the time of the member's date of participation in the 1977 fund, such prior service shall be given only if:

(A) The unit contributes to the 1977 fund the amount

C  
o  
p  
y





necessary to fund prior service liability amortized over a period of not more than ten (10) years. The amount of contributions must be based on the actual salary earned by a first class firefighter at the time the unit becomes a participant in the 1977 fund, or the firefighter becomes a member of the 1977 fund, or if no such salary designation exists, the actual salary earned by the firefighter. However, credit for prior service is limited to the amount necessary to allow the firefighter to accrue twenty (20) years of service credit in the 1977 fund by the time the firefighter reaches the earliest retirement age under the 1977 fund at the time of the member's date of participation in the 1977 fund. The limit on credit for prior service does not apply if the firefighter was a member of the 1937 fund or 1977 fund whose participation was terminated due to the creation of a new fire protection district under IC 36-8-11-5 and who subsequently became a member of the 1977 fund. A firefighter who was a member of or reentered the 1937 fund or 1977 fund whose participation was terminated due to the creation of a new fire protection district under IC 36-8-11-5 is entitled to full credit for prior service in an amount equal to the firefighter's years of service before becoming a member of or reentering the 1977 fund. Service may only be credited for time as a full-time, fully paid firefighter or as an emergency medical technician under section 7(g) of this chapter.

(B) The amount the firefighter would have contributed if the firefighter had been a member of the 1977 fund during the firefighter's prior service must be fully paid and must be based on the firefighter's actual salary earned during that period before service can be credited under this section.

(C) Any amortization schedule for contributions paid under clause (A) and contributions to be paid under clause (B) must include interest at a rate determined by the PERF board.

(c) This subsection applies to a unit that:

- (1) becomes a participant in the 1977 fund under section 3(c) of this chapter; and
- (2) is a fire protection district created under IC 36-8-11 that includes a township or a municipality that had a 1937 fund.

A firefighter who continues uninterrupted service with a unit covered by this subsection and who participated in the township or municipality 1937 fund is entitled to receive service credit for such service in the 1977 fund. However, credit for such service is limited to the amount

C  
O  
P  
Y



accrued by the firefighter in the 1937 fund or the amount necessary to allow the firefighter to accrue twenty (20) years of service credit in the 1977 fund by the time the firefighter becomes fifty-five (55) years of age, whichever is less.

(d) **Except as provided in subsection (f)**, the unit shall contribute into the 1977 fund the amount necessary to fund the amount of past service determined in accordance with subsection (c), amortized over a period not to exceed ten (10) years with interest at a rate determined by the PERF board.

(e) If the township or municipality has accumulated money in its 1937 fund, any amount accumulated that exceeds the present value of all projected future benefits from the 1937 plan shall be paid by the township or municipality to the unit for the sole purpose of making the contributions determined in subsection (d).

**(f) This subsection applies to a town with a marshal (or a marshal and any deputy town marshals) that participates in the 1977 fund under section 3(a) of this chapter. The town shall contribute to the 1977 fund fifty percent (50%) of the amount necessary to fund the prior service liability of the town's town marshal and any deputy town marshals who become members of the 1977 fund, amortized over a period of not more than ten (10) years.**

SECTION 19. IC 36-8-8-18.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 18.1. (a) As used in this section, "police officer" includes a former full-time, fully paid town marshal or full-time, fully paid deputy town marshal who is employed as a police officer by a metropolitan board of police commissioners.

(b) If a unit becomes a participant in the 1977 fund and the unit previously covered police officers, **town marshals, deputy town marshals**, firefighters, or emergency medical technicians in PERF, or if the employees of the unit become members of the 1977 fund under section 7(g) of this chapter, the following provisions apply:

(1) A minimum benefit applies to members electing to transfer or being transferred to the 1977 fund from PERF. The minimum benefit, payable at age fifty-five (55), for such a member equals the actuarial equivalent of the vested retirement benefit payable to the member upon normal retirement under IC 5-10.2-4-1 as of the day before the transfer, based solely on:

(A) creditable service;

(B) the average of the annual compensation; and

(C) the amount credited to the annuity savings account;

of the transferring member as of the day before the transfer under



C  
O  
P  
Y

IC 5-10.2 and IC 5-10.3.

(2) The PERF board shall transfer from PERF to the 1977 fund the amount credited to the annuity savings accounts and the present value of the retirement benefits payable at age sixty-five (65) attributable to the transferring members.

(3) The amount the unit and the member must contribute to the 1977 fund under section 18 of this chapter, if any service credit is to be given under that section, will be reduced by the amounts transferred to the 1977 fund by the PERF board under subdivision (2).

(4) Credit for prior service in PERF of a member as a police officer, **a town marshal, a deputy town marshal**, a firefighter, or an emergency medical technician is waived in PERF. Any credit for that service under the 1977 fund shall only be given in accordance with section 18 of this chapter.

(5) Credit for prior service in PERF of a member, other than as a police officer, **a town marshal, a deputy town marshal**, a firefighter, or an emergency medical technician, remains in PERF and may not be credited under the 1977 fund.

SECTION 20. IC 36-8-8-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 19. (a) The baseline statewide physical examination required by section 7(a) of this chapter shall be prescribed by the PERF board and shall be administered by the appointing authority, as determined by the local board, after the appointing authority extends a conditional offer for employment. The baseline statewide physical examination shall be administered by a licensed physician and must include all of the following:

(1) A general medical history.

(2) The tests identified in rules that shall be adopted by the PERF board under IC 4-22-2.

(b) The PERF board shall adopt minimum standards by rule under IC 4-22-2 that a police officer, **town marshal, deputy town marshal**, or firefighter must meet for the baseline statewide physical examination described in subsection (a). The baseline statewide physical examination and related standards must:

(1) reflect the essential functions of the job;

(2) be consistent with business necessity; and

(3) be reviewed by the 1977 fund advisory board.

(c) The PERF board shall, in consultation with the commissioner of mental health, select the baseline statewide mental examination described in section 7(a) of this chapter. The standards for passing the baseline statewide mental examination shall be determined by the local

C  
O  
P  
Y



board. The baseline statewide mental examination and related standards must:

- (1) reflect the essential functions of the job;
- (2) be consistent with business necessity; and
- (3) be reviewed by the 1977 fund advisory board.

The purpose of the baseline statewide mental examination is to determine if the police officer, **town marshal, deputy town marshal**, or firefighter is mentally suitable to be a member of the department. The local board may designate a community mental health center or a managed care provider (as defined in IC 12-7-2-127(b)), a hospital, a licensed physician, or a licensed psychologist to administer the examination. However, the results of a baseline statewide mental examination shall be interpreted by a licensed physician or a licensed psychologist.

(d) The employer shall pay for no less than one-half (1/2) the cost of the examinations.

(e) Each local board shall name the physicians who will conduct the examinations under this section.

(f) If a local board determines that a candidate passes the local physical and mental standards, if any, established under IC 36-8-3.2-6, the baseline statewide physical examination described in subsection (a), and the baseline statewide mental examination described in subsection (c), the local board shall send the following to PERF:

- (1) Copies and certification of the results of the baseline statewide physical examination described in subsection (a).
- (2) Certification of the results of the physical agility examination required under IC 36-8-3.2-3 or IC 36-8-3.2-3.5.
- (3) Certification of the results of the baseline statewide mental examination described in subsection (c).

(g) The PERF board or the PERF board's designee shall then determine whether the candidate passes the baseline statewide physical standards adopted under subsection (b). If the candidate passes the baseline statewide standards, the PERF board or the PERF board's designee shall also determine whether the candidate has a Class 3 excludable condition under section 13.6 of this chapter. The PERF board or the PERF board's designee shall retain the results of the examinations and all documents related to the examination until the police officer, **town marshal, deputy town marshal**, or firefighter retires or separates from the department.

(h) To the extent required by the federal Americans with Disabilities Act, the PERF board shall do the following:

- (1) Treat the medical transcripts, reports, records, and other



- 1 material compiled under this section as confidential medical  
2 records.  
3 (2) Keep the transcripts, reports, records, and material described  
4 in subdivision (1) in separate medical files for each member.  
5 (i) A local board may, at the request of an appointing authority or on  
6 the local board's own motion, issue subpoenas, discovery orders, and  
7 protective orders in accordance with the Indiana Rules of Trial  
8 Procedure to facilitate the receipt of accurate and original documents  
9 necessary for the proper administration of this chapter. A subpoena or  
10 order issued under this subsection:  
11 (1) must be served in accordance with the Indiana Rules of Trial  
12 Procedure; and  
13 (2) may be enforced in the circuit or superior court with  
14 jurisdiction for the county in which the subpoena or order is  
15 served.

C  
o  
p  
y